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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/523,094      | 02/01/2005  | Atsushi Togawa       | 09812.0209          | 8568             |

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| EXAMINER |
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BRYANT, DOUGLAS

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| ART UNIT | PAPER NUMBER |
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4123

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| MAIL DATE | DELIVERY MODE |
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02/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/523,094 | <b>Applicant(s)</b><br>TOGAWA, ATSUSHI |  |
|                              | <b>Examiner</b><br>DOUGLAS BRYANT    | <b>Art Unit</b><br>4123                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/29/2008, 03/09/2007, 02/01/2005</u> .                      | 6) <input type="checkbox"/> Other: _____                          |



## DETAILED ACTION

### *Title Objection*

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim(s) 10-16 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied a particular apparatus or (2) transform underlying subject matter (such as an article or material) to a different state or thing (*In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008)). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Claim 17 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention in claim 17 recites a "computer program". A program or software without hardware to realize the program or software's functionality, constitutes non-statutory subject matter (see MPEP 2106).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1, 10, and 17 make reference to a " pre-set partition switching timing", the applicant mentions on page 7 line 13 of the specification that a partition switching timing in the selected partition schedule, however the examiner is uncertain how to interpret the claims because there is no explanation within the specification on what a "pre-set partition switching timing is" nor what functionality it may have. The appropriate correction is required.

Claim 10 make reference to an "interrupt processing partition", the applicant mentions on page 7 line 10 of the specification, an "interrupt processing partition so as to coincide with a partition switching timing in the selected partition schedule." The examiner is unclear on what exactly an "interrupt processing partition is." The specification gives no explanation for an "interrupt processing partition" or what functionality the "interrupt processing partition" has. The appropriate correction is required.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10, and 17 states a "pre-set partition switching timing". This statement is indefinite, improper and has insufficient antecedent basis because the word "pre-set partition switching timing" is not clearly defined in the specification. The appropriate correction is required.

Claim 10 and 17 states an "interrupt processing partition". This statement is indefinite, improper and has insufficient antecedent basis because the word "interrupt processing partition" is not clearly defined in the specification. The appropriate correction is required.

Regarding Claims 1-9, the phrase "Means for" is used, but unclear whether the recited structure, material, or acts in the claim are sufficient for performing the claimed function.

The claim limitation "process management" uses the phrase "means for" or "step for", but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because the phrase "means for" is used in the claim

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limitation and it is unclear to one of ordinary skill in the art whether the recited structure, material, or acts in the claim are sufficient for performing the claimed function.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase "means for" or "step for" is clearly not modified by sufficient structure, material, or acts for performing the claimed function. If applicant does not wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase "means for" or "step for").

Due to the ambiguities and confusion in claims 1-17, no art has been applied thereto, see *In re Steele*, 49 CCPA 1295, 305 F.2d 859, 134 USPQ 292 (1962) and *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1070). The examiner will not speculate as to the intended meaning.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Douglas Bryant, whose telephone number is 571-270-7707. The examiner can normally be reached on Monday-Thursday and alternate Friday from 8:30 am to 6:30 pm Est.

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If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, David Robertson can be reached on 571-272-4186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information about unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/D. B./  
Examiner, Art Unit 4123  
February 2, 2009

/Emerson Puente/  
Primary Examiner, Art Unit 2113